

# Promulgation of Rules Governing Siting of Natural Gas Pipelines and Participation in Federal Siting Proceedings, and Repeal of Certain Existing Siting Board Rules

## FINAL ORDER OPENING RULEMAKING

On the Decision:

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## I. BACKGROUND

In 1975, the Energy Facilities Siting Council (“Siting Council”), the predecessor to the Energy Facilities Siting Board (“Siting Board”), initially promulgated regulations regarding Long-Range Forecasts and Supplements, 980 CMR § 7.00. These regulations address, inter alia, construction of natural gas pipeline facilities by Massachusetts local distribution companies and by interstate gas pipeline companies. In 1978, the Siting Council amended its regulations to establish a procedure for Siting Council participation in proceedings before the Federal Energy Regulatory Commission (“FERC”) associated with the construction of gas pipelines by interstate gas pipeline companies in Massachusetts.

In 1992, the Siting Board was established to replace the Siting Council. St. 1992, c. 141 (“merger legislation”). The merger legislation placed the Siting Board within the Department of Telecommunications and Energy (“Department”),<sup>1</sup> and established a facility siting division to administer, implement, and enforce the Siting Board’s statutory obligations. As a result of the merger legislation, certain of the Siting Council’s prior responsibilities, including the review of long-range forecasts and supplements for both electric and gas companies, were transferred to the Department; however, the review of petitions to construct energy facilities remained with the Siting Board.

In 1997, the Electric Restructuring Act of 1997 (“Restructuring Act”)<sup>2</sup> altered the scope of the Siting Board’s review of generating facility proposals and revised the Siting Board’s fundamental mandate, directing it to provide a “reliable,” rather than a “necessary” energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. G.L. c. 164, § 69H.

The Siting Board adopted emergency regulations in 1998 to address the most immediate issues resulting from the merger legislation and the Restructuring Act. Order on Rulemaking, 7 DOMSB 1 (1998); however, less urgent issues were deferred pending the review of the need for

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<sup>1</sup> The Department of Telecommunications and Energy was formerly known as the Department of Public Utilities.

<sup>2</sup> An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein. St. 1997, c. 164.

a complete revision of 980 CMR. The Siting Board discussed the need for a complete revision of its regulations on November 9, 2000 (see Tr. of Siting Board Meeting of November 9, 2000, at 105-112), and in September 2002 adopted revisions to 980 CMR §1.00 (“Rules For the Conduct of Adjudicatory Proceedings”) and 980 CMR § 2.00 (“General Information and Conduct of Board Business”), and repealed 980 CMR § 3.00 (“Rules for Adopting Administrative Regulations”).<sup>3</sup>

The current rulemaking, which creates new regulations governing the review of natural gas pipeline projects constructed in Massachusetts to replace obsolete provisions of 980 CMR § 7.00, represents the second step in the Siting Board’s on-going revision of its regulations. Proposed 980 CMR § 15.00 addresses the Siting Board’s review of natural gas pipeline projects that fall under its jurisdiction; proposed 980 CMR § 17.00 addresses Siting Board participation in the review of proposed natural gas facilities that also fall under federal jurisdiction. In adopting these regulations, the Siting Board seeks to comply with the directives of Executive Order 384 calling for regulatory clarity.

Accordingly, pursuant to G.L. c. 164, §§ 69H, 69J, 69J½ , and G.L. c. 30A, §§ 1, et seq., the Siting Board hereby opens a rulemaking for the purpose of adopting 980 CMR § 15.00, “Rules for Petitions to Construct Natural Gas Pipeline Facilities” and 980 CMR § 17.00, “Energy Facilities Siting Board Participation in Federal Energy Regulatory Commission Proceedings Associated with Natural Gas Projects in Massachusetts,” and for the purpose of repealing 980 CMR §§ 7.07(7)(d) and 7.07(9). A copy of the proposed regulations is attached.

## II. PROPOSED REGULATIONS FOR SITING GAS PIPELINES

The Siting Board proposes to promulgate two new regulations governing the construction of natural gas pipelines in Massachusetts. Proposed 980 CMR § 15.00 sets forth procedures to be followed when a company (whether a local distribution company, an interstate pipeline company, a large gas customer, or another market participant) proposes to build a natural gas pipeline that falls under the Siting Board’s jurisdiction and thus requires the Siting Board’s

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<sup>3</sup> Adoption of 980 CMR §§ 1.00 and 2.00 and Repeal of 980 CMR § 3.00, EFSB 02-RM-1 (2002). The revised rules became effective on October 11, 2002.

approval. Proposed 980 CMR § 17.00 sets forth procedures to be followed when an interstate pipeline company subject to regulation by FERC proposes to build a natural gas pipeline (or other natural gas facility) that falls under FERC jurisdiction and is not subject to Siting Board adjudication. As further discussed in Section III.E, below, the Siting Board seeks comment on both legal and policy issues affecting the delineation of these two categories of pipelines.

A. Construction of Natural Gas Pipelines Subject to Siting Board Jurisdiction

1. Existing Regulation – 980 CMR § 7.00

The Siting Board's existing regulation governing the construction of pipeline facilities is found within 980 CMR § 7.00, "Long-Range Forecasts and Supplements," which sets forth requirements related to long-range forecasting and supply planning for Massachusetts electric and gas utilities. Relevant subsections of 980 CMR § 7.00 require that a gas company planning a new natural gas facility include in its long-range forecast or supplement<sup>4</sup> a description of the planned facility and an assessment of its environmental impact and its consistency with the policies of the Commonwealth. 980 CMR § 7.07(7). The existing regulation specifically requires that the gas company provide: a statement of need, nominal business information,<sup>5</sup> agency jurisdiction(s), estimated project cost, physical project summary,<sup>6</sup> existing and proposed land use, and effects of the project on natural features and land use, facility visibility, and, as applicable, air quality, water quality, solid waste, and noise effects. 980 CMR § 7.07(7)(a), (b),

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<sup>4</sup> 980 CMR § 7.00 applies to planned new facilities, the in-service dates of which are expected to be within the time period covered by a long-range forecast filing. 980 CMR § 7.00 also allows gas companies to file an "annual supplement" to cover facilities proposed between long-range forecast filings. 980 CMR §§ 7.07(7), 7.08.

<sup>5</sup> This information includes the name of the lead company, facility name and location, names of participating owners, and predicted dates of commencement and completion of construction. 980 CMR § 7.07(7)(a).

<sup>6</sup> The applicant shall provide: "a summary statement of name or numerical description of line, purpose, location of terminal points, general location and length of route, facility characteristics including types of structures above and below the ground, proposed normal maximum operating pressure, right-of-way width, estimated cost, possible alternative routes and transportation methods, and a discussion of the alternative of no new pipeline." 980 CMR § 7.07(7)(d)(1).

(d), (e).

The existing regulation applies to proposed gas pipelines “intended to have normal operating pressure in excess of 100 psi [pounds per square inch] gauge and length in excess of one mile.” 980 CMR § 7.07(7)(d). It excludes from review: (1) necessary maintenance of existing pipelines; (2) upgrading of an existing pipeline that has been in existence for at least 24 months and is capable of operating at pressures in excess of 100 psig; (3) construction of certain pipelines that for the first two years of service will be used at a pressure of less than 100 psig; and (4) construction of facilities on an emergency basis subject to 980 CMR § 6.06(2).<sup>7</sup> 980 CMR § 7.07(8)(b)-(e).

Several aspects of 980 CMR § 7.00 render it difficult to use as guidance when constructing a natural gas pipeline in Massachusetts. First, the regulation assumes that the project proponent is a Massachusetts natural gas utility making an application in the context of a long-range forecast filing. This interweaving of gas pipeline siting requirements with forecast filing requirements hinders straightforward application of the regulations to gas pipeline siting, and in particular to gas pipelines proposed by an applicant other than a Massachusetts natural gas utility. Second, the regulations are difficult to locate and are not comprehensive; for example, 980 CMR § 7.00 provides only cursory guidance as to the required content of a petition to construct a natural gas pipeline, and does not address procedural issues such as notice and filing fees. Further, natural gas pipelines to be constructed in coastal zones also are subject to requirements set forth in 980 CMR § 9.00 but nowhere referenced in 980 CMR § 7.00.

## 2. Proposed Regulation – 980 CMR § 15.00

The Siting Board proposes to promulgate 980 CMR § 15.00 to address the structural weaknesses of 980 CMR § 7.00 identified in Section II.A.1, above. Proposed 980 CMR § 15.00 separates regulatory provisions regarding the siting of natural gas pipelines from unrelated

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<sup>7</sup> Section 6.06(2) provides that, when an accident, act of God, or unforeseen condition jeopardizes the health and safety of the public, the Siting Board may grant a Certificate of Environmental Impact and Public Need for a facility without requiring that the facility have been included in an approved long-range forecast or supplement or that a Notice of Intention have been approved by the Siting Board.

regulations regarding long-range forecasts and supplements, clarifies certain jurisdictional issues, provides detailed guidance on the contents of a petition to construct a natural gas pipeline, provides certain procedural requirements, and highlights the relationships between Siting Board review of a proposal and review by other agencies of the Commonwealth.

Proposed 980 CMR § 15.00 is organized in four sections. Section 15.01, “Purpose and Scope,” sets forth the general purpose of the regulation and addresses jurisdictional issues. Section 15.02 defines terms used in the body of the regulation. Section 15.03, “Application for Siting Board Approval to Construct a Gas Pipeline,” sets forth in detail the expected contents of a petition to construct a natural gas pipeline, and addresses related issues such as filing fees, provision of a draft notice, and joint filing of related Siting Board and Department matters. Section 15.04, “Procedures,” addresses the publication of notice, public comment hearings, evidentiary hearings, and the timing and content of the Siting Board’s decision on a petition to construct a natural gas pipeline. All other procedural issues are left to 980 CMR § 1.00, the Siting Board’s revised rules governing the conduct of adjudicatory hearings. A brief summary of certain complex or novel provisions of 980 CMR § 15.00 follows.

a. Jurisdiction

G.L. c. 164, § 69G defines a jurisdictional pipeline as “a new pipeline for the transmission of gas having a normal operating pressure above 100 pounds per square inch gauge (“psig”) which is greater than one mile in length,” excepting pipeline repair and replacement projects. The proposed regulation more specifically defines the set of pipeline projects over which the Siting Board takes jurisdiction, and addresses certain jurisdictional issues that have arisen in recent years.

First, the proposed regulation supplies a definition for “normal operating pressure,” and states that any pipeline with a Maximum Allowable Operating Pressure in excess of 150 psig will be treated as having a normal operating pressure in excess of 100 psig. This provision is intended to resolve uncertainty about the regulatory treatment of pipelines that are built to operate safely at high pressures, but arguably are intended to operate at lower pressures. The proposed regulation, unlike the existing regulation, does not exempt from review pipelines that will be operated under 100 psig for two years.

Second, the proposed regulation clarifies that contiguous pipeline constructed within any five-year period is considered to be a single new facility subject to the Siting Board's jurisdiction. This rule is intended to reduce the potential for segmentation of a pipeline project to avoid siting review, without requiring inquiry into the motives of a developer who constructs a natural gas pipeline in stages.

Third, the proposed regulation distinguishes pipeline repair and replacement projects from new pipeline construction. Replacement pipe includes lengths of restructured, rebuilt, or relaid pipe that are of the same nominal diameter and design pressure and are also within the same right-of-way as the pipe being replaced; repair and replacement projects are excluded from siting review.

Finally, the proposed regulation addresses the issue of Siting Board jurisdiction over pipelines that also are regulated by FERC. The existing 980 CMR § 7.00 states that if a pipeline is regulated by FERC pursuant to the Natural Gas Act, the Siting Board shall participate in the federal proceeding and request joint adjudicatory hearings with FERC. As a matter of practice, the Siting Board staff intervenes in FERC's adjudication of requests for a § 7(c) Certificate of Public Convenience and Necessity ("CPCN") under the Natural Gas Act, views the route of any major proposed pipeline, holds one or more public hearings, and forwards environmental comments and recommendations to FERC; however, the Siting Board does not attempt parallel adjudication, since FERC's review covers the major issues (need, alternatives, routing, environmental impacts, and cost) that would be raised in a Siting Board proceeding.

However, it has come to the Siting Board's attention in recent years that interstate pipeline companies may make use of certain federal regulatory provisions to construct sizable pipelines (significantly longer than one mile, and with a pressure significantly higher than 100 psig) with little or no substantive FERC review. The Siting Board is concerned about the potential disparity in regulatory treatment between pipelines built by interstate pipeline companies and pipelines built by Massachusetts gas utilities or other non-interstate developers. The Siting Board also is concerned that sizable pipelines may be built in Massachusetts without the level of pre-construction review deemed appropriate by the Massachusetts legislature. The proposed regulations address this issue broadly, by exempting from Siting Board review *only* those interstate pipelines or pipeline laterals that receive a full project-specific § 7(c) CPCN

review, including a need analysis, alternatives analysis, and substantive environmental review of the proposed site or route, pursuant to § 7(c) of the Natural Gas Act. Any other pipeline construction that meets the size and pressure thresholds established in G.L. c. 164, § 69H, as interpreted in 980 CMR §§ 15.01 and 15.02, would be subject to review by the Siting Board pursuant to 980 CMR § 15.00.

The draft regulation's approach to this issue is to attempt to ensure that a substantive, site-specific review occurs for all pipeline projects proposed for Massachusetts, which is consistent with the mandate given the Siting Board by the Massachusetts legislature. However, since this requires the Siting Board to conduct a substantive review of pipelines over which FERC also asserts jurisdiction, the approach could be vulnerable to legal challenge. The Siting Board has identified four other approaches for reviewing interstate pipeline projects, which have various strengths and weaknesses. In Section III.E, below, the Siting Board describes these approaches and requests comments on the legal and policy implications of each approach.

b. Application to Construct

The proposed regulation identifies the required elements of an application to construct a jurisdictional gas pipeline, which include a detailed petition, a draft of the public notice for the proceeding, and, in certain circumstances, copies of an approved long-range forecast and certain filings made with the Massachusetts Energy Policy Act ("MEPA") Office of the Executive Office of Environmental Affairs ("EOEA"). The proposed regulation specifies the content of the petition in considerable detail, drawing on both the existing regulations and current practice. Topics that must be covered in the petition include a project description, an analysis of the need for the facility, alternative approaches and routes, an analysis of the project's environmental effects, an economic analysis, and an analysis of the project's effect on the reliability of the gas supply system. Consistent with established precedent, the proposed regulation allows a developer to propose a gas pipeline to meet a reliability-based need, an economic efficiency-based need, or an environmental need. It also specifies that a project may be proposed to serve needs within Massachusetts, outside of Massachusetts, or both within and outside of Massachusetts.



c. Inter-Agency Coordination

The proposed regulation requires an applicant proposing to construct a pipeline within a coastal zone to consult with the Office of Coastal Zone Management within EOEA as to the need for an inland alternative prior to filing with the Siting Board. This requirement was developed after consultation with the Office of Coastal Zone Management, and reflects the two agencies' views on the most efficient means of implementing an existing Memorandum of Understanding with respect to the review of energy facilities located in coastal zones. The proposed regulation also provides for the joint filing and review of related Siting Board and Department matters, as set forth in G.L. c. 25, § 4.

B. Construction of Natural Gas Pipelines Subject to Regulation by FERC

In this rulemaking, the Siting Board also proposes to promulgate 980 CMR § 17.00, a new regulation addressing Siting Board participation in proceedings conducted by FERC. Proposed 980 CMR § 17.00 is based on the existing 980 CMR § 7.07(9), which sets forth procedures for Siting Board participation in FERC proceedings involving interstate facilities. As discussed above, 980 CMR § 7.07(9) states that, if a pipeline is regulated by FERC pursuant to the Natural Gas Act, the Siting Board shall intervene in the federal proceeding, hold one or more public hearings, request joint adjudicatory hearings with FERC, and submit comments on the proposal. The existing 980 CMR § 7.07(9), which was adopted in 1978, does not reflect the subsequent changes in the federal regulatory process brought about by amendments to the Natural Gas Act, the adoption of the Natural Gas Policy Act of 1978, and corresponding amendments to FERC's regulations.

The proposed regulation sets forth procedures for participation in FERC proceedings that reflect these changes, which include FERC's use of abbreviated federal review processes for certain types of pipeline projects. Proposed 980 CMR § 17.00 is organized in six sections. Section 17.01, "Purpose and Scope," sets forth the general purpose of the regulation. Section 17.02 defines terms used in the body of the regulation. Section 17.03, "Notice of Application filed with the Federal Energy Regulatory Commission," requires that the Siting Board be notified of all proposals filed with FERC to construct natural gas infrastructure in Massachusetts, and provides for the Siting Board to notify other relevant Massachusetts agencies of these

filings. Section 17.04, “Board Participation in § 7(c) CPCN Proceedings,” describes the public hearing and comment process that the Siting Board uses when it intervenes in FERC’s extensive review of pipeline projects filed under § 7(c) of the Natural Gas Act. Section 17.05, “Board Participation in § 7(c) Blanket Certificate Proceedings,”<sup>8</sup> describes an abbreviated comment process to be used when projects are being reviewed under FERC’s 45-day blanket certificate process. Finally, Section 17.06, “Board Participation in Other FERC Proceedings,” provides general authority for either the Siting Board or its staff to participate in any FERC proceeding of interest to the agency.

As discussed in Section II.A.2.a, above, Section 17.05 applies only to construction that does not meet the size and pressure thresholds established in G.L. c. 164, § 69H. All interstate natural gas facilities would undergo Siting Board review pursuant to 980 CMR § 15.00 unless they receive a full project-specific § 7(c) CPCN review, including a need analysis, alternatives analysis, and substantive environmental review of the proposed site or route, pursuant to § 7(c) of the Natural Gas Act. Any other pipeline construction that meets the size and pressure thresholds established in G.L. c. 164, § 69H would be subject to review by the Siting Board pursuant to 980 CMR § 15.00 rather than pursuant to 980 CMR § 17.05.

C. Repeal of 980 CMR §§ 7.07(7)(d) and 7.07(9)

The Siting Board proposes to repeal 980 CMR § 7.07(7)(d), its existing regulation governing the contents of a petition to construct a natural gas pipeline facility. The existing 980 CMR § 7.07(7)(d) is redundant of and will be superseded by 980 CMR § 15.03.

The Siting Board also proposes to repeal 980 CMR § 7.07(9), its current regulations addressing Siting Board participation in FERC proceedings. The existing 980 CMR § 7.07(9) does not reflect current federal statutes and federal regulatory law, is redundant of certain sections of proposed 980 CMR § 17.00, and will be superseded by the provisions in 980 CMR § 17.00.

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<sup>8</sup> The holder of a blanket certificate may construct pipeline projects with costs within a certain range (currently \$7.4 million to \$20.6 million) after providing 45 days advance notice to FERC; no site-specific review is required unless a protest is filed within that 45 day period. 18 C.F.R. §§ 157.201, et seq.

### III. REQUEST FOR COMMENTS

The Siting Board seeks written comments addressing any or all provisions of proposed 980 CMR §§ 15.00 and 17.00. The Siting Board also specifically seeks written comments on the following topics:

#### A. Length, Pressure, and Time Interval Thresholds - 980 CMR § 15.01(2)

The proposed regulation seeks to resolve certain issues that have arisen over time regarding the Siting Board's jurisdiction, including:

- segmentation of new pipeline construction;
- replacement of existing pipeline with new pipeline of the same capacity; and
- the definition of normal operating pressure.

The Siting Board would particularly like to receive comments addressing the following questions:

1. Is the regulation clear about the conditions under which a pipeline project is defined as jurisdictional to the Siting Board, or is there a class of projects for which jurisdiction would remain uncertain?
2. Does a five-year time-span provide a reasonable basis to encompass contiguous construction activities?
3. Is there a way to define "normal operating pressure" that can be objectively, accurately, and assuredly determined prior to facility construction?
4. To what extent would the new regulation change the number or type of gas pipeline petitions that are submitted?

#### B. Contents of Petition - 980 CMR § 15.03(1)

Proposed 980 CMR § 15.03(1) details the information that should be included in a petition to build a jurisdictional pipeline. Do the requirements appear to be sufficiently flexible to address any likely jurisdictional pipeline project, including larger or smaller projects or atypical circumstances?

#### C. Route Alternatives and Route Variations - 980 CMR §§ 15.02, 15.03(1, 5)

The Siting Board will continue to require a comparative analysis of reasonable alternative route(s) for gas pipelines. In addition, the Siting Board intends to permit developers to seek simultaneous approval of one or more *variations* to a specific route. As proposed in the

draft regulations, a route variation is an alternative to a short segment of a proposed pipeline route; a variation typically would be proposed when the petitioner is aware of specific uncertainties (e.g., regarding the placement of other utilities in a city street, or the ability to obtain permission for a street opening) that would affect the feasibility of that route segment. Is the Siting Board's distinction between "route alternatives" and "route variations" clear and is it workable?

D. Filing Fees for Non-Utilities - 980 CMR § 15.03(7)

The proposed regulation sets filing fees for pipeline projects in accordance with G.L. c. 164, § 69J½, which specifies that a filing fee of between \$25,000 and \$75,000 may be assessed for proposals to construct a facility that does not generate electricity. Filing fees are not required if the applicant is a utility company subject to the jurisdiction of the Department that is assessed annually for the expenses of the Department. Please comment on the fee structure set forth in the proposed regulation.

E. Pipeline Projects Undergoing FERC Review - 980 CMR § 15.01(3)(a)

As discussed in Section II.A.2. a, above, the development of the proposed regulation has highlighted disparities in the regulatory treatment of pipeline facilities proposed by interstate pipeline companies and by other developers of pipelines in Massachusetts. Under current FERC regulations, interstate pipeline companies are not required to seek a § 7(c) CPCN unless the project will cost more than \$20.6 million, or unless the company intends to seek eminent domain rights to construct the project. Pipeline projects that cost between \$7.4 million and \$20.6 million must provide 45 days advance notice to FERC before construction; if no protest is filed during that period, construction may proceed without further review. Pipeline projects that cost less than \$7.4 million may be constructed without any advance notice to or review by FERC. See 18 C.F.R. § 157.208.

These cost-based review categories may promote regulatory efficiency at FERC, which is charged with ensuring just and reasonable rates within the industries that it regulates; however, they bear little resemblance to the Siting Board's jurisdictional thresholds, which are based on pipeline length and pressure. Thus, if the Siting Board simply relies upon FERC's review for

this category of project, sizable pipeline projects may be built in Massachusetts by interstate pipeline companies, with little or no substantive review, and certainly without the level of pre-construction review deemed appropriate by the Massachusetts legislature. Moreover, the potential exists for significant regulatory disparity between construction proposed by interstate pipeline companies and construction proposed by Massachusetts utilities and other developers. This disparity could result in differing degrees of environmental protection for intrastate and interstate projects; it almost certainly will result in differing degrees of public participation in the review of such projects.

In developing the proposed regulation, the Siting Board considered several approaches to reviewing gas facilities built by interstate pipeline companies. These approaches ranged from a continuation of the Siting Board's current practices, up to a full adjudication of all interstate pipeline proposals that meet the definition of a facility set forth in G.L. c. 164, § 69G. In the proposed regulation, interstate pipeline projects are excluded from review under 980 CMR § 15.00 if they require or have been issued a § 7(c) CPCN under of the Natural Gas Act. Such pipeline projects undergo a substantive site-specific review by FERC; the Siting Board believes that it can most effectively pursue its mandate by intervening in the FERC proceeding and providing comments, as set forth in 980 CMR § 17.04. Pipelines that do not undergo substantive site-specific review by FERC would be reviewed by the Siting Board pursuant to 980 CMR § 15.00. Since there would be little or no overlap between FERC's minimal oversight of such pipeline projects and the issues reviewed by the Siting Board, the Siting Board's believes that its investigation would have only indirect effects on the federal regulatory scheme. However, we cannot be sure that a rule requiring Siting Board adjudication of interstate pipeline projects would be accepted by the courts if challenged.

The Siting Board has considered four main alternatives to the regulatory approach presented in the draft regulation. Each strikes a different balance among the goals of environmental protection, public participation, regulatory efficiency, regulatory consistency, and the rational expansion of the natural gas delivery system in Massachusetts. The Siting Board seeks comments on the extent to which each alternative is practical, is consistent with both federal law governing the interstate pipeline system and state law governing the construction of gas pipelines, and addresses the Siting Board's central concern regarding the construction of

major pipeline infrastructure with little or no substantive review. The four alternatives to the proposed approach are:

1. Current Practice. Under this alternative, the Siting Board would continue its current practices with respect to gas facilities that fall under FERC's jurisdiction. Specifically, the Siting Board would intervene in § 7(c) CPCN proceedings on gas facilities to be constructed in Massachusetts, hold public hearings, and provide site-specific comments to FERC. The Siting Board also would require that interstate pipeline companies provide notice of proposals to construct pipelines pursuant to a blanket certificate, and would file a protest if it believed more extensive review of a project is warranted. However, the Siting Board would not conduct its own adjudicatory proceedings for any pipeline under FERC jurisdiction.

The proposed regulation could be modified to reflect current practice by extending the exclusion located at 980 CMR § 15.01(3)(a) to any interstate pipeline, without restriction.

2. Full Siting Board Review of All Gas Facilities. Under this alternative, the Siting Board would acknowledge that FERC has jurisdiction over the siting of interstate natural gas pipelines. The Siting Board would nonetheless adjudicate all proposals to construct natural gas facilities in Massachusetts, consistent with the requirements of G.L. c. 164, § 69J. If a natural gas facility also fell under FERC's jurisdiction, the Siting Board would seek to coordinate its review schedule with FERC's, and would provide a copy of its decision to FERC as input to FERC's regulatory process. Under this alternative, some projects would undergo parallel review by the Siting Board and FERC.

Proposed 980 CMR § 15.00 could be modified to reflect this approach by eliminating the 980 CMR § 15.01(3)(a) exclusion and possibly by excluding interstate pipelines from fees.

3. Circumscribed Scope of Review for Facilities under FERC Jurisdiction. As with alternative 2, the Siting Board would adjudicate all proposed facilities in Massachusetts and would provide a copy of its decision to FERC as input to any federal review. However, under this alternative, the Siting Board would not review the need for a proposed interstate pipeline facility. This approach is closest to the process which appears to be contemplated in the Siting Board's existing regulation at 980 CMR § 7.07(9), which calls for adjudicatory hearings but limits the scope of its comments to FERC to "the difficulties and problems identified at said public hearings." It also is similar to procedures used by our counterpart agencies, the Connecticut Siting Council and the New Hampshire Site Evaluation Committee, which hold evidentiary hearings and issue orders on projects that are subject to FERC jurisdiction, but do not rule on the need

for such projects.<sup>9</sup>

The proposed regulation could be altered to reflect this approach by eliminating the 980 CMR § 15.01(3)(a) exclusion, by limiting the applicability of need-related sections 15.03(1)(b) and 15.03(1)(g)(ii) to only intrastate pipelines, and possibly by excluding interstate pipelines from fees.

4. Informal Review Process for non-§ 7(c) Pipelines. Under this alternative, the Siting Board would maintain its current practice of intervening in § 7(c) CPCN proceedings at FERC, holding public hearings, and providing comments based on those hearings to FERC. However, the Siting Board would conduct an informal review of gas facilities that are subject to FERC jurisdiction but are not subject to § 7(c) CPCN proceedings. As part of this informal review, the Siting Board would examine various possible routes for the proposed facilities and would work with the applicant to develop mitigation for any environmental impacts of the proposed project. During the informal review, the Siting Board would not conduct full adjudicatory proceedings with direct cross-examination by parties, but would receive sworn testimony and public comment.

The proposed regulation could be altered to reflect this approach by (1) extending the proposed 980 CMR § 15.01(3)(a) exclusion to any interstate pipeline, without restriction, and (2) by developing within 980 CMR § 17.00 a procedure for interstate projects that are not subject to § 7(c) CPCN proceedings.

In conjunction with one or more of the approaches described above, the Siting Board would consider requiring all interstate pipeline companies provide notice to the Siting Board of any gas facility proposed for construction in Massachusetts and to indicate what level of FERC review, if any, is required before the facility may be constructed. This notice requirement would

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<sup>9</sup> See, e.g., Docket Nos. SEC 96-01/96-03 of the New Hampshire Site Evaluation Committee, and Docket No. 221 of the Connecticut Siting Council. The Connecticut Siting Council issues a Certificate of Environmental Compatibility and Public Need for facilities built by interstate pipeline companies after considering issues related to the siting of pipeline facilities, environmental mitigation measures, and construction procedures. Opinion of the Connecticut Siting Council in Docket No. 221, at 1 (August 1, 2002). The New Hampshire Site Evaluation Committee issues a Certificate of Site and Facility after considering: (1) the applicant's financial, technical, and managerial capabilities; (2) whether the project will unduly interfere with the orderly development of the region; (3) whether the project will have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment and public safety; and (4) whether operation of the project is consistent with state energy policy. Decision and Order of the New Hampshire Site Evaluation Committee in Docket Nos. SEC 96-01/96-03, at 4 (July 16, 1997).

provide the Siting Board with an opportunity to evaluate whether further review is necessary and to alert other affected state agencies.

The Siting Board seeks comments on whether the public interest would be better served by Siting Board review or adjudication of gas facilities that are subject to FERC's rate-making authority, including those that undergo no substantive pre-construction review by FERC. The Siting Board also seeks comments on the legal constructs under which the Siting Board may conduct an adjudication or other substantive review of pipelines that are subject to FERC jurisdiction. Further, the Siting Board seeks comments regarding the merits of the proposed regulation and each of the other four approaches described above, including any suggested revisions that would assist the Siting Board in achieving its goal of ensuring meaningful review of the construction of interstate gas pipelines in Massachusetts.

F. Jurisdiction over Hinshaw Pipelines - 980 CMR § 15.01(3)(a)

The Hinshaw Amendment to the Natural Gas Act exempts from FERC regulation persons who transport natural gas received from another person within or at the boundary of a state, if (1) all the natural gas so received is ultimately consumed within such state, and (2) the facilities and rates are regulated by the state. 15 U.S.C., § 717(c). The construction and siting of Hinshaw Pipelines are regulated by the states even though such pipelines may hold a FERC limited-jurisdiction certificate. It is the Siting Board's understanding that FERC may regulate pipelines otherwise subject to the Hinshaw Amendment if a state does not assert its authority to regulate such pipelines. The Siting Board believes that it has an obligation to regulate the siting of Hinshaw Pipelines pursuant to G.L. c. 164, § 69J.

The proposed regulation does not directly address the issue of Siting Board jurisdiction over Hinshaw Pipelines, as the Siting Board believes that an assertion of jurisdiction over all pipeline facilities built in Massachusetts is implicit in G.L. c. 164, § 69J. Nonetheless, the Siting Board seeks comments on whether it is clear from 980 CMR § 15.00 that Hinshaw Pipelines are subject to state regulation, or whether the proposed regulations should be modified to explicitly assert jurisdiction under 980 CMR § 15.00 over Hinshaw Pipelines and any other facilities that would be fully reviewed by FERC only if they are not reviewed by the state. In addition, the Siting Board seeks comments on the legal and policy implications of asserting jurisdiction over



the siting of Hinshaw Pipelines, including possible implications with respect to the rate-setting responsibilities of the Department.

G. Jurisdiction over Direct Sales Laterals - 980 CMR § 15.01(3)(a)

Direct Sales Laterals are lateral pipelines that directly serve end-users and that are constructed and operated by the interstate company that operates the interstate pipelines from which the lateral branches.

The proposed regulation does not directly address the issue of Siting Board jurisdiction over Direct Sales Laterals as the Siting Board believes that an assertion of jurisdiction over all pipeline facilities built in Massachusetts is implicit in G.L. c. 164, § 69J. Nonetheless, the Siting Board seeks comments on whether it is clear from 980 CMR § 15.00 that Direct Sales Laterals are subject to state regulation, or whether the proposed regulations should be modified to explicitly assert jurisdiction under 980 CMR 15.00 over Direct Sales Laterals and any other facilities that would be fully reviewed by FERC only if they are not reviewed by the state. In addition, the Siting Board seeks comments on the legal and policy implications of asserting jurisdiction over the siting of Direct Sales Laterals, including possible implications with respect to the rate-setting responsibilities of the Department.

IV. FILING COMMENTS

The Siting Board seeks written comments on the proposed regulations, 980 CMR §§ 15.00 and 17.00, and to the questions posed in Section III above, no later than Friday, January 31, 2003. Comments should be filed with the Energy Facilities Siting Board, One South Station, Boston, Massachusetts 02110. The Siting Board requests that all written comments also be submitted to the Siting Board in electronic format using one of the following methods: (1) by electronic mail ("e-mail") attachment to [SitingBoard.Filing@state.ma.us](mailto:SitingBoard.Filing@state.ma.us) (copy to [Peter.Ray@state.ma.us](mailto:Peter.Ray@state.ma.us)); or (2) on a 3.5" floppy diskette, PC-compatible format. The text of the e-mail or diskette label must specify: (1) an easily identifiable case caption; (2) the docket number; (3) the name of the person or company submitting the filing; and (4) a brief descriptive title of the document (e.g., comments on 980 CMR § 15.00). The electronic filing should also include the name, title and telephone number of a person to contact in the event of questions

about the filing. Text responses should be submitted in either WordPerfect (naming the document with a “.wpd” suffix) or in Microsoft Word (naming the document with a “.doc” suffix). Documents submitted in electronic format will be posted on the Siting Board’s web page, which can be accessed via the Department’s Website, [www.state.ma.us/dpu/siting\\_board.htm](http://www.state.ma.us/dpu/siting_board.htm).

To provide further opportunity for comment, and pursuant to G.L. c. 30A, §§ 2 and 4, the Siting Board will hold a public hearing on Tuesday, February 18, 2003 at 10:00 a.m. at the Siting Board’s offices, One South Station, Boston, Massachusetts. Interested persons may present facts, opinions, or arguments relating to the proposed regulations at the public hearing.

The effective date of the revised regulations shall be the date of their final publication in the Massachusetts Register.

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Denise L. Desautels

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Selma Urman  
Presiding Officers

Dated this 20<sup>th</sup> of December, 2002.

APPROVED by the Energy Facilities Siting Board at its meeting of December 20, 2002,  
by the members and designees present and voting: Paul B. Vasington (Chairman, DTE/EFSB);  
Deirdre K. Manning (Commissioner, DTE); W. Robert Keating (Commissioner, DTE); and  
Joseph Donovan (for Peter J. Abair, Director of Economic Development).

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Paul B. Vasington, Chairman  
Energy Facilities Siting Board

Dated this 20<sup>th</sup> day of December, 2002.

Appeal as to matters of law from any final decision, order or ruling of the Siting Board may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the order of the Siting Board be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Siting Board within twenty days after the date of service of the decision, order or ruling of the Siting Board, or within such further time as the Siting Board may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the clerk of said court. (Massachusetts General Laws, Chapter 25, Sec. 5; Chapter 164, Sec. 69P).

## 980 CMR 15.00: PETITIONS TO CONSTRUCT NATURAL GAS PIPELINE FACILITIES

### Section

15.01: Purpose and Scope

15.02: Definitions

15.03: Application for Siting Board Approval to Construct a Gas Pipeline

15.04: Procedures

### 15.01: Purpose and Scope

- (1) Purpose. 980 CMR 15.00 sets forth procedures governing the filing and the review by the Energy Facilities Siting Board of an application to construct a gas pipeline. Requirements set forth in this chapter supersede any provisions contained in 980 CMR 5.00, 7.00, and 9.00 that relate to proposals to construct gas pipeline facilities.
- (2) Scope. An application must be filed under 980 CMR 15.00 whenever any person proposes to construct a gas transmission pipeline with a normal operating pressure in excess of 100 psig, when the total length of new gas pipeline will exceed one mile.
  - (a) Pipeline Segmentation. For purposes of determining jurisdiction, any adjacent lengths of gas pipeline constructed within the five preceding years shall be included when calculating the total length of new gas pipeline. However, lengths of pipeline that have previously been granted written approval by the Siting Board shall not be included in the total length of new gas pipeline.
  - (b) Replacement Pipe. Notwithstanding 980 CMR 15.01(2)(a), above, any lengths of restructured, rebuilt, or relaid pipe that are of the same nominal diameter and design pressure and are also within the same right-of-way as the replaced pipe shall be subtracted when calculating the total length of new gas pipeline, for purposes of determining jurisdiction.
- (3) Exclusions.
  - (a) Construction of any interstate pipeline that requires or has been issued a Certificate of Public Convenience and Necessity under § 7(c) of the Natural Gas Act does not constitute construction of a pipeline for transmission of gas subject to 980 CMR 15.00. Persons proposing to construct any pipeline for transmission of gas excluded from Siting Board review by 980 CMR 15.01(3)(a) must comply with the requirements of 980 CMR 17.00.
  - (b) Commencement of permanent placement of facilities on an emergency basis subject to compliance with the provisions of 980 CMR 6.06(2) does not constitute construction of a pipeline for transmission of gas subject to 980 CMR 15.00.
- (4) Application of 980 CMR 1.00. 980 CMR 1.00 shall apply to proceedings initiated pursuant to 980 CMR 15.00, except to the extent that 980 CMR 1.00 and 980 CMR 15.00 are in conflict. In the event of a conflict, 980 CMR 15.00 shall prevail over 980 CMR 1.00.

(5) Waiver of Rules. Where good cause appears, not contrary to statute, the Board or Presiding Officer may permit deviation from the rules in 980 CMR 15.00.

#### 15.02: Definitions.

For the purposes of 980 CMR 15.00, the definitions set forth in 980 CMR 1.03 shall apply unless the context or subject matter requires a different interpretation. The following definitions also shall apply to this section:

Coastal Zone means the geographic area described in 301 CMR 21.05, used to establish the area of jurisdiction for the Coastal Zone Management Program Federal Consistency Review Procedures (301 CMR 21.00), pursuant to G.L. c. 21A, §§ 2, 4A.

Department means the Massachusetts Department of Telecommunications and Energy.

Design pressure means design pressure of a pipe as defined in 49 CFR Part 192 (Subpart C).

Gas means natural gas or any direct substitute. Gas includes natural gas, propane air, synthetic natural gas, and liquified natural gas.

Interstate Pipeline means a pipeline that is used in the transmission of natural gas in interstate commerce, and shall not include in-state transmission of gas such as intrastate pipelines, Hinshaw Amendment pipelines, or other means of intrastate distribution.

Long-Range Forecast means a long-range forecast filed with the Department of Telecommunications and Energy pursuant to G.L. c. 164, § 69I.

MAOP means maximum allowable operating pressure, which is the maximum pressure at which a pipeline or segment of a pipeline may be operated under 49 CFR Part 192.

Natural Gas Act means Natural Gas Act, 15 U.S.C. § 717 *et seq.*

Normal operating pressure means the maximum pressure that would be expected in the pipeline based on the configuration of compressors and pressure regulators. Any pipeline with an MAOP in excess of 150 psig will be treated as having a normal operating pressure in excess of 100 psig.

Preferred Route means the gas pipeline route and any route variations proposed by the Applicant for approval by the Board.

psig means pounds per square inch gauge.

Route alternative means a gas pipeline route and any route variations proposed for approval in the alternative to the preferred route.

Route segment means a discrete portion of a pipeline route.

Route variation means a route segment, generally short in distance, which could substitute for some portion of a preferred route or route alternative in the event that construction along that portion of the preferred route or route alternative proves infeasible.

### 15.03: Application for Siting Board Approval to Construct a Gas Pipeline

(1) Contents of Petition. An application for approval to construct a gas pipeline shall include a written petition which (1) sets forth the need for the pipeline project, (2) compares the pipeline project to other alternatives, and (3) analyzes the pipeline project's cost, environmental impacts, and effects on the reliability of the gas supply system, as specified below. The petition shall describe the pipeline project in its entirety, including any intervening replacement sections.

(a) Project Description. The petition shall contain a description of the pipeline project, specifying:

- (i) the total length of new and replacement pipeline, pipeline diameter and intended MAOP; the location of the proposed route and any route variations for which the Applicant seeks approval; the types and locations of structures to be constructed above and below the ground; the width of permanent right-of-way; and depth of installation;
- (ii) the existing gas supply system in the area, including interstate and intrastate pipelines, laterals, pressure regulation equipment, and locations of significant gas demand; and
- (iii) proposed construction methods, access and construction rights-of-way, and predicted dates of construction.

(b) Need. The petition shall document the need for the pipeline project.

(i) A pipeline project may be proposed to meet a reliability-based need (for example, to maintain or increase the reliability of gas service or to connect new customers), an economic efficiency-based need (for example, to reduce the cost of energy or to increase competition between gas suppliers), or an environmental need (for example, to reduce the level of environmental impacts associated with meeting certain energy requirements). A pipeline project may be proposed to serve needs within Massachusetts, or outside of Massachusetts, or both within and outside of Massachusetts.

(ii) If the project is proposed to meet a reliability-based need, the petition shall include: (i) an analysis of existing and projected gas requirements for the area to be served by the pipeline project; (ii) an analysis of existing and planned resources available to meet those requirements; and (iii) an analysis of service deficiencies that require additional gas supply resources or an analysis of the reliability benefits of the pipeline project. The petition shall describe in reasonable detail the methods and assumptions used in each analysis.

(iii) If the project is proposed to meet an economic efficiency-based or

environmental need, the petition shall include quantitative analyses of the economic or environmental benefits of the project. The petition shall describe in reasonable detail the methods and assumptions used in each analysis.

(iv) The petition shall describe any secondary benefits claimed for the proposed pipeline, shall provide analyses documenting such benefits, and shall describe in reasonable detail the methods and assumptions used in each analysis.

(c) Alternative Approaches. The petition shall describe all reasonably practicable means of meeting the need identified in 980 CMR 15.03(1)(b), above. These alternative approaches may include, without limitation: upgrades to existing facilities; enhancement of local or regional gas storage capacity; interconnection to a different source of gas; interconnection at a different location; pipeline development by a different person; and reduction of gas requirements through the use of demand-side management. The petition shall compare the environmental impacts, capital and operating costs, and effects on the reliability of the gas delivery system associated with each of the alternative approaches, and shall state the Applicant's reasons for pursuing the pipeline project rather than one of the alternative approaches.

(d) Route Selection Process. The petition shall contain a description of the process by which the proposed route for the pipeline was selected. Specifically, the petition shall:

- (i) describe how the Applicant identified potential routes or route segments for the pipeline project;
- (ii) list the potential routes or route segments that were identified; and
- (iii) present the environmental, economic, reliability, and other criteria used to evaluate the potential routes and describe how these criteria were applied, weighted and combined.

(e) Preferred Route and Route Alternatives.

(i) The petition shall indicate which route or combination of route segments identified in 980 CMR 15.03(1)(d), above, is the Applicant's preferred route for the pipeline project.

(ii) The petition shall identify any other routes or combinations of route segments identified in either 980 CMR 15.03(1)(c) or (d), above, that the Applicant intends to pursue as route alternatives. The petition shall present at least one route alternative that is geographically distinct from the preferred route. A waiver of this requirement pursuant to 980 CMR 15.01(5) may be sought if the Applicant can demonstrate that there are no feasible pipeline routes that are geographically distinct from the preferred route.

(f) Environmental Analysis. The petition shall include an analysis of the likely environmental impacts of the pipeline project. Specifically, the petition shall:

- (i) describe the existing uses and natural resource characteristics of the land along the preferred route, including: types and densities of development; agricultural and other open space uses; parks and recreation



areas; areas designated for protection of their natural, archaeologic, historic, or scenic value; utility and transportation corridors; types of disturbed and undisturbed habitat; actual and potential use by typical and rare wildlife species; and zoning;

(ii) describe the temporary environmental impacts from project construction and the proposed mitigation of such impacts including, as applicable: land use impacts, including effects on agricultural and forest resources, upland habitats, and changes to views; water resource impacts, including effects on rivers, streams, wetlands and other natural habitats and on water quality; noise impacts; air quality impacts; solid waste impacts; traffic impacts; and standard procedures for environmental impact mitigation and the handling of hazardous materials during construction;

(iii) describe the long-term environment impacts from the project and mitigation of such impacts including, as applicable: land use impacts, including effects on land use and on natural features and natural habitats and changes to views; water resource impacts, including effects on rivers, streams, wetlands and other natural habitats and on water quality; noise impacts; air quality impacts; and solid waste impacts; and

(iv) compare the environmental impacts of the route alternatives listed in 980 CMR 15.03(1)(e), above.

(g) Economic Analysis.

(i) The petition shall compare the capital and operating costs of the route alternatives listed in 980 CMR 15.03(1)(e), above. The petition shall list costs by major categories such as design and engineering costs, permitting costs, land acquisition costs, cost of labor, cost of materials, and pipeline and right-of-way maintenance costs.

(ii) If the project is proposed to meet an economic efficiency-based need, or if it would provide economic efficiency-related benefits if located along either the preferred or an alternative route, the petition also shall compare economic benefits of the project as built along the preferred route and the route alternatives. The petition shall describe in reasonable detail the methods and assumptions used in this analysis.

(h) Reliability Analysis. The petition shall compare the route alternatives listed in 980 CMR 15.03(1)(e), above, with respect to their effects on the reliability of the gas supply system. The petition shall include an analysis of the extent to which each route alternative would maintain or enhance deliverability of gas at an adequate pressure and volume to customers affected by the pipeline project, and shall specify the approximate number of years for which adequate service would be provided under each alternative.

(i) Maps. The petition shall include:

(i) a single map showing the proposed route and the route alternatives;

(ii) one or more maps based on United States Geological Survey topographic maps of 1:24,000 or 1:25,000 scale, showing the proposed pipeline route and any route variations, the route alternatives listed in 980

CMR 15.03(1)(e), above, and the locations of related facilities; and  
(iii) aerial photographs at a scale of approximately 1:2400, marked to show proposed pipeline alignment, location of related facilities, land ownership, rights-of-way, and any proposed construction access roads.

(j) Figures. The petition shall include figures or diagrams showing typical right-of-way and workspace configurations using cross-sectional or other views, and plans for waterway and road crossings.

(k) Required Permits. The petition shall contain a list of the local, state, and federal permits required to construct and operate the pipeline project.

(2) Long-Range Forecast. If the Applicant is required to file a long-range forecast pursuant to G.L. c. 164, § 69I, the application shall include a copy of the Applicant's most recently approved long-range forecast and an analysis demonstrating that the pipeline project is consistent with that long-range forecast.

(3) MEPA Filings. If the pipeline project requires the filing of an Environmental Notification Form pursuant to 301 CMR 11.00, the application shall include a copy of the Environmental Notification Form and the resulting Certificate from the Secretary of Environmental Affairs. If additional filings have been made regarding the project pursuant to 301 CMR 11.00, a copy of these additional filings and any resulting Certificates from the Secretary of Environmental Affairs shall be included in the application.

(4) Coastal Zone Alternatives. If the preferred route is located in or passes through a Coastal Zone, the Applicant shall consult with the Office of Coastal Zone Management within the Executive Office of Environmental Affairs to determine whether it must present an inland alternative to the preferred route. If an inland alternative is required, this alternative shall be presented as a route alternative pursuant to 980 CMR 15.03(1)(e)(ii). If an inland alternative is not required, the petition shall be accompanied by a letter from the Office of Coastal Zone Management attesting to this determination.

(5) Draft Notice. An application for approval to construct a gas pipeline shall include a draft notice of adjudication that complies with the requirements set forth in 980 CMR §§ 1.04(3) *et seq.* The draft notice shall contain a description of the preferred route and any route alternatives identified in 980 CMR 15.03(1)(e), specifying for each route the total length of pipeline to be constructed, the location of route, pipeline diameter, proposed MAOP, types and locations of related structures above and below the ground, and route variations. The draft notice shall be provided both in writing and electronically.

(6) Joint Filing of Related Matters

(a) Related Siting Board Matters. An Applicant may file a petition to construct a generating facility or any other related matter within the Board's jurisdiction in conjunction with an application to construct a gas pipeline. These petitions shall be assigned separate docket numbers, but may be the subject of a joint notice, may be the subject of consolidated public and evidentiary hearings, and may be addressed in a consolidated decision by the

Board.

(b) Related Department Matters. An Applicant may file, in conjunction with a petition to construct a gas pipeline, a petition with the Department for approval of a long-range forecast pursuant to G.L. c. 164, § 69I, a petition for a zoning exemption pursuant to G.L. c. 40A, § 3, or a petition for any other related matter within the Department's jurisdiction, with a request that the matter be referred to the Board and consolidated with the petition to construct a gas pipeline facility. This request may be granted at the discretion of the Chairman of the Department. If this request is granted, the Chairman of the Department shall issue a ruling stating that he has referred the matter to the Board pursuant to G.L. c. 25, § 4, for consolidation with the Board matter. The consolidated petitions may be the subject of a joint notice, may be the subject of consolidated public and evidentiary hearings, and may be addressed in a consolidated decision by the Board.

(7) Filing Fees

(a) Applicability. Filing fees are assessed whenever an Applicant is not a utility subject to the jurisdiction of the Department that is assessed annually for the expenses of the Department.

(b) Fee Levels. Fees are assessed based on the length of the preferred route, according to the schedule below. Where a conflict exists, the lower fee shall apply.

(i) For a gas pipeline that is less than two miles in length, the filing fee shall be \$40,000.

(ii) For a gas pipeline that is more than two miles in length but less than five miles in length, the filing fee shall be \$60,000.

(iii) For a gas pipeline that is more than five miles in length, the filing fee shall be \$75,000.

(iv) For an application to construct a gas pipeline of any length that is filed in conjunction with an application to construct a generating facility, the filing fee shall be \$25,000.

(c) Fee Payment. Payment of the filing fee is due at the time the Application to Construct is filed with the Board. The filing fee shall be made by certified check payable to the Commonwealth of Massachusetts.

15.04: Procedures

(1) Notice Requirements

(a) The applicant shall provide notice of adjudication by first class mail in accordance with the requirements of 980 CMR 1.03(4).

(b) In addition, the applicant shall send a copy of the notice via first class mail to all abutters and abutters to abutters within 300 feet of the preferred route and route alternatives identified in 980 CMR 15.03(1)(e), or as the Presiding Officer may otherwise provide.

(c) The applicant shall place a copy of the petition to construct on file in the Town or City Hall and the main public library of each Massachusetts municipality

through which the preferred route or any route alternative identified in 980 CMR 15.03(1)(e) passes.

(d) Notice may be supplemented during the course of the proceeding, as the Presiding Officer may provide.

(2) Public Comment Hearings. As soon as practicable after the filing of a petition to construct a gas pipeline, the Board shall hold a public comment hearing in at least one of the municipalities through which the preferred route passes. In accordance with 980 CMR 1.04(5), public comment hearings are conducted to afford members of the general public an opportunity to comment on a matter. Comments made at public comment hearings are not deemed to be evidence. Additional public comment hearings may be held at the discretion of the Presiding Officer.

(3) Evidentiary Hearings. The Board shall commence evidentiary hearings within six months of the filing of a petition to construct a gas pipeline. Evidentiary hearings shall be conducted in accordance with 980 CMR §§1.06 *et seq.*

(4) Decisions

(a) Within twelve months of the filing of a petition to construct a gas pipeline, the Board shall issue a decision approving the petition, approving the petition with conditions, or rejecting the petition. The Board may approve the construction of the pipeline along the preferred route, along any route alternative included in the notice of adjudication, or along any combination of route segments included in the notice of adjudication; however, the Board may not approve the construction of the pipeline along any route or route segment that has not been included in a notice of adjudication.

(b) The Board's decision shall be in writing, and shall set forth all necessary determinations of fact or law, including findings with respect to: (i) the need for or benefits to be provided by the pipeline project; (ii) the relative merits of alternative approaches to serving the need or achieving the benefits for which the pipeline is proposed, in terms of cost, reliability, and environmental impact; (iii) whether the preferred route for the pipeline project is superior to route alternatives in terms of cost, reliability, and environmental impact; (iv) whether the pipeline project is consistent with current Massachusetts health, environmental protection, and resource use and development policies; and (v) whether the pipeline project is consistent with the Board's mandate to provide a reliable energy supply for Massachusetts with a minimum impact on the environment at the lowest possible cost.

(c) If the applicant is required to file a long-range forecast pursuant to G.L. c. 164, § 69I, the decision also shall include the Board's determination as to whether the pipeline project is consistent with the most recently approved long-range forecast.

REGULATORY AUTHORITY

M.G.L. c. 164, §§ 69H, 69J, and 69J½.

## 980 CMR 17.00: ENERGY FACILITIES SITING BOARD PARTICIPATION IN FEDERAL ENERGY REGULATORY COMMISSION PROCEEDINGS ADDRESSING NATURAL GAS PROJECTS IN MASSACHUSETTS

### Section

17.01: Purpose and Scope

17.02: Definitions

17.03: Notice of Application filed with the Federal Energy Regulatory Commission.

17.04 Board Participation in § 7(c) CPCN Proceedings

17.05: Board Participation in § 7(c) Blanket Certificate Proceedings.

17.06: Board Participation in Other FERC Proceedings.

### 17.01: Purpose and Scope

(1) Purpose. 980 CMR § 17.00 sets forth: (1) the obligations of a person seeking approval from the Federal Energy Regulatory Commission to construct, expand, modify, or replace natural gas pipelines, natural gas manufacturing facilities, natural gas storage facilities, or natural gas importation facilities in Massachusetts, and (2) the procedures used by the Energy Facilities Siting Board to participate in the Federal Energy Regulatory Commission's review of any natural gas project. This chapter supersedes 980 CMR § 7.07(9).

(2) Scope. This chapter applies whenever a person or persons makes an application to the Federal Energy Regulatory Commission seeking approval to construct, expand, modify, or replace a gas project in Massachusetts, or initiates a collaborative approach preparatory to making such an application. The applications covered by this regulation include, but are not limited to: an application for a § 7(c) Certificate of Public Convenience and Necessity, an application under § 3 of the Natural Gas Act, and an application under § 311 of the Natural Gas Policy Act of 1978.

(3) Waiver of Rules. Where good cause appears, not contrary to statute, the Board or the Presiding Officer may permit deviation from any rules contained in 980 CMR §§ 17.00 *et seq.*

### 17.02: Definitions

For the purposes of 980 CMR §§ 17.00, the definitions set forth in 980 CMR § 1.03 shall apply unless the context or subject matter requires a different interpretation. The following definitions also shall apply to this section:

FERC means the Federal Energy Regulatory Commission.

FERC Application means an application or petition filed with FERC seeking to construct, expand, modify, or replace a gas project in Massachusetts, or seeking an exemption from FERC regulation with respect to such a gas project.

Gas means natural gas or any direct substitute. Gas includes natural gas, propane air, synthetic natural gas, and liquified natural gas.

Gas project means the construction, expansion, modification, or replacement of a gas pipeline, gas manufacturing facility, gas storage facility, or gas importation facility, and associated facilities.

Protest means an objection to any application, complaint, petition, or order to show cause, filed with the Federal Energy Regulatory Commission pursuant to 18 C.F.R. § 157.10(a)(4).

Section 7(c) Blanket Certificate means a certificate issued by the Federal Energy Regulatory Commission authorizing certain construction and operation of facilities and certain certificate amendments and abandonment under § 7(c) of the Natural Gas Act, codified as 15 U.S.C. §§ 717 *et seq.*, and pursuant to 18 C.F.R. §§ 157.201 *et seq.*

Section 7(c) CPCN means a Certificate of Public Convenience and Necessity issued by the Federal Energy Regulatory Commission authorizing certain acts or operations concerning the regulation, sale, or transportation of natural gas in interstate commerce under § 7(c) of the Natural Gas Act, codified as 15 U.S.C. § 717f(c), and pursuant to 18 C.F.R. §§ 157.1 *et seq.*

Staff means Staff of the Energy Facilities Siting Board.

#### 17.03: Notice of Application filed with the Federal Energy Regulatory Commission.

(1) Notice to Board. Any person seeking approval from FERC to construct, expand, modify, or replace a gas project in Massachusetts shall file a copy of its FERC Application with the Board at its offices in Boston no later than seven days after such application is filed with FERC. This filing shall be accompanied by a cover letter that identifies: (1) the site or general route of the gas project, and (2) the municipalities in Massachusetts in which the construction, expansion, modification, or replacement of the gas project would take place.

(2) Notice to Other Agencies. Upon receipt of a FERC Application, the Board shall notify relevant state environmental agencies of the filing. Such agencies may include the Department of Environmental Protection, the Massachusetts Office of Coastal Zone Management, the Massachusetts Environmental Policy Act Unit, the Division of Fisheries and Wildlife, the Department of Environmental Management, and the Massachusetts Historical Commission.

#### 17.04: Board Participation in § 7(c) CPCN Proceedings

(1) Determination of Interest. Upon receipt of a copy of an application to FERC for a § 7(c) CPCN, Staff shall evaluate the filing to determine whether intervention or other action in the FERC proceeding is warranted. Staff shall seek to intervene on behalf of

the Board in any proceeding regarding a gas project that meets the definition of “facility” set forth in G.L. c. 164, § 69G, and may intervene, at its discretion, in other § 7(c) CPCN proceedings.

(2) Public Hearing and Site Visit. If Staff intervenes in a proceeding, Staff members shall view the site or route of the gas project and shall hold a public informational hearing in one or more municipalities in which the gas project would be located. The project developer shall attend each public informational hearing to address questions concerning the natural gas project. Notice of each public informational hearing shall be given to the public, to relevant local officials, and to state environmental agencies at least 21 days in advance in a practical manner to be specified by the Presiding Officer. If practical, notice of each public informational hearing also shall be placed in the *Environmental Monitor* published by the Massachusetts Executive Office of Environmental Affairs. Unless otherwise directed, the project developer shall be responsible for all costs related to the publication and distribution of notice. At its discretion, Staff may conduct public informational hearings jointly with FERC or with any relevant state environmental agency. At its discretion, Staff also may request written public comment on the potential impacts of the gas project.

(3) Comments. After conducting the public informational hearing, Staff shall provide comments to FERC on environmental, land use, and community issues associated with the gas project. Staff shall monitor the FERC proceeding and may file further comments or otherwise participate in the FERC proceeding as appropriate.

#### 17.05: Board Participation in § 7(c) Blanket Certificate Proceedings.

(1) Project Evaluation. Upon receipt of a copy of a Request for Authorization to FERC to construct, modify, expand, or replace a gas project pursuant to a § 7(c) blanket certificate, Staff shall evaluate the filing to determine the environmental, land use, and community issues associated with the construction and operation of the gas project. As part of its review, Staff may visit the site or route of the gas project. At its discretion, Staff also may request written public comment on the potential impacts of the gas project. Notice of any such request for public comment shall be published at least 14 days in advance of the comment deadline in a practical manner to be specified by the Presiding Officer. Unless otherwise directed, the project developer shall be responsible for all costs related to the publication and distribution of the notice.

(2) Protest. If Staff’s evaluation of the gas project raises concerns that cannot be resolved in the time allowed under FERC regulations, Staff may file a protest setting forth its concerns and describing the potential, if any, to reduce the impacts of the gas project through mitigation or routing changes. After filing the protest, Staff shall meet with the project developer in an effort to resolve their concerns within the time allowed under FERC regulations. If the concerns are resolved, Staff shall withdraw its protest.

(3) Siting Board Jurisdiction. If the gas project is subject to the Siting Board’s jurisdiction under 980 CMR §15.00, then §§17.05(1) and (2) shall not apply.



17.06: Board Participation in Other FERC Proceedings.

- (1) Notice of Collaborative Approach or Pre-filing Process. Any person initiating a collaborative approach, pursuant to 18 C.F.R. § 157.22, or pre-filing process preparatory to making an application to FERC to construct a gas project in Massachusetts shall notify the Siting Board of its request to FERC to use the collaborative approach or pre-filing process within seven days after it makes such request, and shall include the Siting Board in the collaborative approach or pre-filing process as an interested entity.
- (2) Notice of Petition for Exemption from Regulation. Any person filing an application with FERC pursuant to 18 C.F.R. §§ 152.1(a) *et seq.* for exemption from the provisions of the Natural Gas Act, codified as 15 U.S.C. § 717, *et seq.*, and the rules and regulations issued pursuant thereto, shall notify the Siting Board of its application within seven days of its filing with FERC.
- (3) Participation. The Board or Staff may participate in any other FERC proceeding or in a collaborative approach, as an intervenor or through any other appropriate means, consistent with FERC regulations.

REGULATORY AUTHORITY

M.G.L. c. 164, § 69H.